

ENTERED

January 17, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

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|-----------------------------------|---------------------------|
| JERRY BUTLER SMITH JR, | § |
| | § |
| Plaintiff, | § |
| VS. | § CIVIL NO. 2:16-CV-00478 |
| | § |
| TDCJ PAROLE BOARD, <i>et al</i> , | § |
| | § |
| Defendants. | § |

ORDER

On October 28, 2016, Plaintiff Jerry Butler Smith, Jr. (“Smith”), a former Texas inmate, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants Texas Department of Criminal Justice Parole Board (“TDCJ”) and Gateway Foundation (“Gateway”).¹ Dkt. No. 1. Smith’s July 17, 2017, amended complaint alleges that TDCJ violated his rights by placing him in a Substance Abuse Felony Punishment Facility (“SAFPF”) program. Dkt. No. 25. Smith also alleges that TDCJ officers prevented Smith from escaping from an assault by an individual named “Joshua McNight.” *Id.* Smith further alleges that Gateway failed to protect him because Gateway’s “accountability policy” resulted in Smith being labeled a “snitch.” *Id.* Plaintiff seeks injunctive relief in the form of a showing to taxpayers that Gateway’s program is a failure. *Id.*

The Court has before it Smith’s amended complaint, Dkt. No. 25; the September 13, 2017, Memorandum and Recommendation (“M&R”) of the Magistrate Judge to whom this case was referred pursuant to 28 U.S.C. § 636(b) which recommends the dismissal with prejudice of Smith’s claims against the TDCJ, Dkt. No. 26; Smith’s September 20, 2017, notice of appeal to the U.S. Court of Appeals for the Fifth Circuit, Dkt. No. 28; Smith’s October 4, 2017, application to proceed *in forma pauperis* on appeal, Dkt. No. 30; and the Magistrate Judge’s October 31,

¹ The Gateway Foundation is a private company that contracts with the TDCJ to provide substance abuse treatment services. Dkt. No. 26 at 2 n.1.

2017, M&R which recommends the denial of Smith's application to proceed *in forma pauperis* on appeal. The deadline to file objections to the Magistrate Judge's proposed conclusions of law and recommendations has passed, and the docket sheet shows that no objections have been filed. *See* 28 U.S.C. § 636(b)(1) (setting a 14-day deadline to file objections); FED. R. CIV. P. 72(b)(2) (same); *see also* Dkt. Nos. 26 at 10; 32 at 4 (advising parties of the 14-day deadline).

After independently reviewing the record and considering the applicable law, the Court adopts the Magistrate Judge's proposed conclusions and recommendations. The Court hereby **DISMISSES WITH PREJUDICE** the claims against the TDCJ for failure to state a claim in violation of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). The Court will retain Smith's claims against Gateway. The Court further **DENIES** Plaintiff's application to proceed *in forma pauperis*.

SIGNED this 17th day of January, 2018.



Hilda Tagle
Senior United States District Judge